

## **SECTION-BY-SECTION ANALYSIS OF CHARTER**

### **AIRLINE CONSUMER INFORMATION AND CHOICE COMMISSION**

**Background:** The Department has established policies and procedures for committee management in DOT Order 1120.3B (9-23-93). Order 1120.3B applies to any committee that is a "formally constituted group of individuals with collective responsibility to consider, investigate, study, advise, or make recommendations through their chairperson to a designated Federal official." Since the Airline Consumer Information and Choice Commission is a formally constituted group of individuals to make recommendations to the President, it is covered by the DOT Order.

The DOT Order has certain operating guidelines, including documentation of a committee. Order, Chapter I, paragraph 8.d. A charter is necessary for a committee that is established by statute or utilized by the President for obtaining advice or recommendations. Order, Chapter II, paragraphs 3a. and 8; and Chapter I, paragraph 5a.

**Title of Commission:** The Order suggests that, for convenience in record-keeping, reporting, and identification it is desirable that the key word be the first word in a committee's name. Chapter I, Paragraph 8.e. Accordingly, it is suggested that the first word be "airline" for purposes of this commission since the Department has economic jurisdiction over airlines and an interest in airlines' provision of information to travel agents.

## **CHARTER**

### **I. Establishment**

**This charter establishes the National Commission to Ensure Consumer Information and Choice in the Airline Industry ("Airline Consumer Information and Choice Commission" or "Commission"), as directed by section 228 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. 106-181 (April 5, 2000).**

**Analysis:** The Order directs that the establishing charter contain the official designation. Chapter II, paragraph 8.

## **II. Objectives, Scope of Activities, and Description of Duties**

**A. The Commission shall study (1) whether the financial condition of travel agents is declining and, if so, the effect that this will have on consumers; and (2) whether there are impediments to information regarding the services and products offered by the airline industry and, if so, the effects of those impediments on travel agents, Internet-based distributors, and consumers. In conducting the study, the Commission shall pay special attention to the condition of small travel agents (i.e., those travel agencies with \$1,000,000 or less in annual revenues).**

**B. Based on the results of the study, the Commission shall make such recommendations as it considers necessary to improve the condition of travel agents, especially small travel agents, and to improve consumer access to travel information.**

**C. The Commission, through the Chairperson, shall have the following powers:**

- 1. To set and hold such hearings and sit and act at such times as the Chairperson deems advisable.**
- 2. To request staff and support and nonconfidential information from federal agencies and departments.**
- 3. To appoint and set the pay of personnel for the Commission.**
- 4. To establish such panels consisting of members of the Commission as the Chairperson determines appropriate to carry out the functions of the Commission. Such panels may hold hearings, request staff and support by federal agencies and departments, and secure nonconfidential information from federal agencies and departments, as authorized by the Chairperson of the Commission.**

**Analysis:** The Order directs that the charter contain the expected goals and parameters of the committee's mission. This charter uses the language in section 228 of AIR-21 to describe the Commission's objectives, scope of activities, and duties. Since the Commission is not functioning as an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. app., the charter does not contain boilerplate language on advisory committees.

Section 228 of AIR-21 directs the Transportation Secretary to appoint the Chairperson of the Commission and gives the Chairperson the power to appoint panels of the Commission. Panels shall consist only of Commission members. The charter is drafted so that the Commission or panels must go through the Chairperson in order to set and hold hearings, to hire personnel, or to request the use of federal personnel, support, and documents. Additionally, paragraph VIII of the charter authorizes the Chairperson of the Commission to hold meetings.

### **III. Commission Membership**

#### **A. The Commission shall consist of nine members as follows:**

- 1. Three members appointed by the Secretary of Transportation, one member of which shall be a representative of the travel agent industry, one member shall be a representative of the airline industry, and one member shall be an individual who is not a representative of either the travel agent or airline industry.**
- 2. Two members appointed by the Speaker of the House of Representatives.**
- 3. One member appointed by the minority leader of the House of Representatives.**
- 4. Two members appointed by the majority leader of the Senate.**
- 5. One member appointed by the minority leader of the Senate.**

**B. The member appointed by the Secretary who is not a representative of either the travel agent or airline industry shall serve as Chairperson of the Committee.**

**C. Private sector members of the Commission shall not be subject to the conflict of interest restrictions of 18 U.S.C. §§ 202-09.**

**D. A vacancy in the Commission shall not affect its powers and shall be filled in the manner in which the original appointment was made.**

**E. The terms of office for all members shall be for the life of the Commission.**

**Analysis:** The listing of members, filling of vacancies, and terms of office are described in section 228, AIR-21. The DOT Order describes the process for appointing members, Chapter II, paragraph 11. Each appointed member must be designated as a representative of a particular interest or party or a Special Government Employee. Paragraph 10. The OST ethics official should be consulted to ensure that the members are not SGEs.

#### **IV. Duration**

**The Commission, through its Chairperson, shall submit its report, including recommendations to improve the condition of travel agents and consumer access to travel information, to the President of the United States and to the Congress within six months after completion of the initial appointments of members, and terminate on the 30th day after submitting the report, as provided in section 228 of AIR-21.**

**Analysis:** The DOT Order requires statement of the committee's duration. For a statutory committee, the description of the duration shall cite the establishing law. Chapter II, paragraph 8. Section 228 of AIR-21 gave this Commission a comparatively short duration.

The Commission's report is subject to the Presidential Records Act, 44 U.S.C. 2201 et. seq. The National Archives and Records Administration is responsible, under the PRA, for maintenance, custody, and disclosure of Presidential records.

## **V. Official to Whom the Commission Reports**

**The Commission reports to the President of the United States and to the Congress.**

**Analysis:** The DOT Order also requires that the charter state the official to whom the committee reports. Section 228 of AIR-21 requires that this Commission report to the President and Congress.

## **VI. Agency Responsible for Providing Support for the Commission**

**A. The Department of Transportation is the official sponsor of the Commission. Upon the request of the Commission, or a panel of the Commission, the Secretary of Transportation, or his designee, shall provide the Commission or panel with professional and administrative staff and other support, on a reimbursable basis, to assist the Commission or panel in carrying out its responsibilities.**

**B. The Commission may secure directly from any department, agency, or instrumentality of the United States (including independent agencies) information (other than information required by any statute of the United States to be kept confidential by such department or agency) necessary for the Commission to carry out its duties. Upon request of the Commission, the head of that department or agency shall furnish such nonconfidential information to the Commission.**

**C. Upon the request of the Commission, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties.**

**Analysis:** The DOT Order requires that the charter include the sponsor and office providing services. A sponsor is defined as the individual designated to be responsible for the committee and the maintenance of committee records. Chapter I, paragraph 6 e. The committee records will include such items as the establishing documents, official correspondence,

and membership information, as further described in Chapter I, paragraph 9. Section 228 of AIR-21 directs that DOT is the supporting agency.

## **VII. Estimated Annual Operating Costs**

**A. The operating costs for the Commission are \$995,000. The Commission's expenditures shall be consistent with generally accepted government accounting practices and shall be authorized by the Department of Transportation's custodial accountant.**

**B. Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.**

**C. The Commission, through the Chairperson, may appoint and fix the pay of such personnel as it considers appropriate.**

**Analysis:** The DOT Order requires that the charter provide the estimated annual cost to the government to fund, support, and maintain the committee in dollars and staff-years. This draft does not include staff-years. It does include the language suggested by Richard Pemberton with regard to the consistency of the Commission's expenditures with generally accepted government accounting practices. Section 228 of AIR-21 provides that the members shall serve without pay and shall receive per diem travel expenses and that the Commission may hire personnel. The charter gives the Chairperson ultimate authority over personnel hiring.

## **VIII. Meetings**

**The Commission (and any panels of the Commission) shall meet at such times as the Chairperson may direct. A quorum of the Commission shall be not less than five members and shall include the Chairperson.**

**Analysis:** The DOT Order suggests that the charter contain the fiscal year estimate for the total number of estimated meetings. This charter does not contain an estimated number of meetings, but leaves that to the discretion of the Chairperson. Additionally, the charter establishes a quorum for meeting purposes and requires that the Chairperson be included in the quorum.

The DOT Order also states that meetings shall be held in Washington, DC to limit costs. The DOT sponsor (X) must submit a written request to the DOT Committee Management Officer (S-10) and receive written authorization before proceeding to plan a meeting elsewhere or a site visit. Chapter II, paragraph 14.

#### **IX. Applicability of the Federal Advisory Committee Act**

**This Commission is exempt from the Federal Advisory Committee Act (5 U.S.C. App.) pursuant to section 228 of AIR-21.**

**Analysis:** Section 228 of AIR-21 specifically exempts this commission from the applicability of FACA. This relieves the committee of the need to comply with many FACA requirements, including ensuring balanced membership, providing advance public notification of meetings and ensuring public access to meetings.

#### **X. Date: This charter is filed on**

**Analysis:** The Department committee management official will complete this date. After the Secretary approves the charter, the Department files the charter with the appropriate congressional committees and the Library of Congress. This filing date is the effective date of the charter, or April 9, 2002. Chapter II, paragraphs 3 and 4.